



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 12, 2004

Mr. James L. Dougherty, Jr.
City Attorney
5120 Bayard
Houston, Texas 77006

OR2004-1082

Dear Mr. Dougherty:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 196101.

The City of West University Place (the "city"), which you represent, received a request for information pertaining to a complaint the requestor filed with the city's police department on a specified date and all information the city maintains about the person to whom a specified license plate was issued. You inform us that you have released some responsive information but claim that other requested information is excepted from disclosure under sections 552.101, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.¹

As a preliminary matter, we note that you have failed to fully comply with section 552.301 of the Government Code. Under section 552.301(b), a governmental body that receives a request for information that it wishes to withhold from public disclosure must ask for the attorney general's decision and state the exceptions that apply within ten business days after

¹In your response to the requestor you sought clarification of a portion of the request. *See* Gov't Code § 552.222(b) (governmental body may communicate with requestor for purpose of clarifying or narrowing request for information). You do not inform us that the city had received a response to its request for clarification as of the date you requested this ruling. Because the city is awaiting a response, its deadline for seeking a ruling from this office as to any other information responsive to these aspects of the request has been tolled. *See* Open Records Decision No. 663 (1999) (determining that during interval in which governmental body and requestor communicate in good faith to narrow or clarify request, the Act permits tolling of deadlines imposed by section 552.301). We note, however, that "the ten-day deadline is tolled during the [clarification or narrowing] process but resumes, upon receipt of the clarification or narrowing response, on the day that the clarification is received." ORD 663 at 5. Thus, the city's deadlines for requesting a ruling from this office with respect to any other responsive information that the city maintains will resume upon the city's receipt of the requestor's response.

receiving the request. You indicate that the city received this request on November 20, 2003. Therefore, you were required to submit your request for a decision, stating the exceptions that apply, by December 9, 2003. Although you timely submitted your initial request for a decision to this office, we note that in your brief of December 11, 2003, you raise section 552.108 as an additional exception to disclosure. Section 552.108 is a discretionary exception that protects the governmental body's interests and may be waived. *See* Open Records Decision Nos. 586 (1991) (governmental body may waive law enforcement exception), 522 at 4 (1989) (discretionary exceptions in general). In this instance, we find that you did not timely raise section 552.108 and have therefore waived this exception.

We turn now to your other claimed exceptions, which you timely raised. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses laws that make criminal history record information ("CHRI") confidential. CHRI "means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions" but does not include "driving record information maintained by [the Department of Public Safety ("DPS")] under Subchapter C, Chapter 521, Transportation Code." Gov't Code § 411.082(2).

Federal regulations prohibit the release of CHRI maintained in state and local CHRI systems to the general public. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given."), (2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself."). Under chapter 411 of the Government Code, a criminal justice agency may obtain CHRI from DPS or from another criminal justice agency. Gov't Code §§ 411.083(b)(1), .087(a)(2), .089(a). However, CHRI so obtained is confidential and may only be disclosed in very limited instances. *See* Gov't Code § 411.084; *see also* Gov't Code § 411.087 (restrictions on disclosure of CHRI obtained from DPS also apply to CHRI obtained from other criminal justice agencies). Therefore, the city must withhold any CHRI that it has in its possession that falls within the ambit of these state and federal regulations.

Section 552.101 of the Government Code also encompasses amendments to the Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), that make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). We have no basis for concluding that the social security number at issue is confidential under section 405(c)(2)(C)(viii)(I) and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act (the "Act") imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, the city should ensure that such information is not obtained or maintained pursuant to any provision of law, enacted on or after October 1, 1990.

We also note that section 552.101 encompasses the doctrine of common law privacy, which protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (*citing United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps); and identities of victims of sexual abuse, *see* Open Records Decision Nos. 440 (1986), 393 (1983), 339 (1982). We have reviewed the submitted records and marked the information that must be withheld pursuant to section 552.101 and common law privacy.

We note that the information submitted at Tab 2 includes the address of an individual who is apparently a peace officer working for the city's police department. Section 552.117(a)(1) of the Government Code excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of governmental body who request that this information be kept confidential under section 552.024. Section 552.117(a)(2) protects the same information regarding a peace officer regardless of whether the officer made an election under section 552.024 or 552.1175 of the Government Code.² Pursuant to section 552.117(a)(2), the city must withhold the address at issue if this individual was a licensed peace officer at the time this request was received. Pursuant to section 552.117(a)(1), the city must withhold the address if the individual was not a licensed peace officer at the time this request was received but elected, prior to the receipt of this request, to keep such information confidential.

You also contend that a portion of the submitted information is excepted from disclosure under section 552.130. This section excepts from disclosure "information [that] relates to . . . a motor vehicle operator's or driver's license or permit issued by an agency of this state [or] a motor vehicle title or registration issued by an agency of this state." Gov't Code § 552.130. We have marked the information that must generally be withheld pursuant to this exception. We note, however, that section 552.130 excepts information from disclosure in

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

order to protect an individual's privacy. Accordingly, the requestor is entitled to the marked information to the extent it pertains to a vehicle in which she owns an interest. *See* Gov't Code § 552.023(b) (governmental body may not deny access to information to person to whom information relates on grounds that information is considered confidential by privacy principles).

Finally, we note that the submitted information includes a partial account number. Section 552.136 of the Government Code states that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. We have marked the information that the city must withhold pursuant to this exception.

In summary, any CHRI that the city has in its possession must be withheld pursuant to section 552.101 of the Government Code and the relevant federal and state provisions. We have marked information that the city must withhold pursuant to section 552.101 and common law privacy. Social security numbers may be confidential under federal law. The address we have marked in the record at Tab 2 must be withheld if section 552.117 applies. Under section 552.130, the city must withhold the marked motor vehicle record information unless it pertains to a vehicle in which the requestor owns an interest. The marked account number information must be withheld pursuant to section 552.136. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one

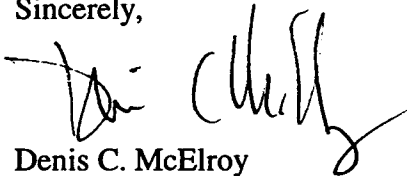
of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Denis C. McElroy
Assistant Attorney General
Open Records Division

DCM/lmt

Ref: ID# 196101

Enc. Submitted documents

c: Ms. Aleithia Artemis
P.O. Box 601
Bellaire, Texas 77402-0601
(w/o enclosures)